1: Hoebel E-5 (1933) 1940 NO6 Comanche NO6

[627] [681] of guilt by an accused (except in sorcery) was so uncommon that there are not cases enough to draw sound conclusions.

Cases were opened with formal politeness and smooth words; the man who had come to prosecute addressed the one he was about to accuse as "brother."[7] While the defendant listened, he was told why the accuser had come as prosecutor and informed what must be given in damages to satisfy his visitor. Inasmuch as the defendant usually knew what had called forth the visit, the prosecutor was not invited into the tipi to take the seat of the guest of honor opposite the door. Ordinarily the defendant was sitting beside the door of his tipi as the prosecuting party arrived, and the negotiations took place before the tipi.

The aggrieved usually stated his demand for damages specifically, but the damages rendered were those which the defendant agreed to give and the aggrieved was willing to accept. "Willingness," with either or both, could of course be anything but willing. There was no judge to determine what should be paid in composition for the wrong, nor was there any specific customary code regulating payments in accordance with degree of wrong. Consequently, only by agreement could the case be settled. Without the aid of an arbitrator, the sole way to agreement was bargain.

[627] [577] The factors which operated in the process of settlement were manifold and delicate, each factor having many shades and facets. Who can say what the forces shaping the attitudes which determine the actions of any individual in any special circumstance may be? It is clear, however, that the will to push or resist was of greatest moment. Sometimes the defendant acquiesced only too willingly to the first demands made upon him. Sometimes the prosecutor placed a timid request for compensation, which he accepted with a sign of relief, glad that the thing was done. It is in this very will to push or to resist that the personal factor entered and resists reduction to written words. Nevertheless, personal courage and aggressiveness were the potent traits which counted in the Comanche male. Each party mentally weighed the other and decided accordingly, most of this being done before any action recounted in a story could occur. The one outstanding factor around which the settlement of a dispute turned was not the question of the right or wrong of the situation, but rather the relative bravery in warfare of the two parties involved. A reputation as a doughty slayer of enemies was a handy thing. The real point was that in Comanche law, as in all law, the ultimate power was resort to force. But

[608] [7] In Shoshone and Comanche theory, men who had shared a woman sexually were supposed to be brothers. For a discussion of the brother terminology and its relation to Shoshone-Comanche marriage practices, see E. A. Hoebel, *Comanche and Hǂandika Shoshone Relationship Systems*, pp. 448–449.

1: Hoebel E-5 (1933) 1940 NO6 Comanche NO6

the right to use—or threaten with—force was not reserved to the government. It was a privilege reserved to the interested parties in case the adjudicative process broke down. In other words, there existed a situation exactly comparable to that observed among nations which recognize certain practices of international law, but which reserve to themselves the sovereign right to resort to force if things don't suit them: Then, in the words of Post Oak Jim, "Lots of trouble, lots of people hurt."

627 577

It is very clear, however, that the Comanches tended to attribute moral rightness to the braver man. This is revealed, for instance, in the settlement of a land-rights squabble in the early days on the reservation:

Case 8. Land Dispute
Informant: Eagle Tail Feather

When land allotments were made by the government, two neighbors quarrelled over a quarter section of land which both wanted. One of them succeeded in establishing his claim on the disputed land. The other protested the action and contested the claim. Feeling ran higher and higher over the matter until each was threatening to kill the other.

Quanah Parker, who was chief of the band at the time, was called upon to settle the dispute. He asked two warriors to testify as to the past war record of the disputants. Since one of the warriors was late in coming to report, Parker sent Eagle Tail Feather, then chief of the Indian police, to find him to hear what he had to say. Eagle Tail Feather took another warrior with him as witness. The first disputant also went in the party, thinking to gain an advantage by confronting the witness personally.

When the four men were assembled at the warrior-witness's house, this disputant spoke up, saying, "Which is better, I or this other fellow?"

"All right," said the warrior, "now that you've asked me, I'll speak out plain. That other one (the opponent in the case) is the better man. I was in a battle where I saw him get off his horse and help a dismounted comrade from the midst of the enemy. He is a brave man and did a great deed; you'd better look out or he'll whip you, or kill you."

These words silenced the claimant. He knew that he would lose the land unless he could speak up and tell of a braver deed which he had performed. This he could not do, so he remained speechless while the others waited for his words. When they were satisfied that his adversary was the braver man, Eagle Tail Feather and his aide returned to Quanah and told him what had ensued at the meeting.

Quanah decreed that the disputed quarter section should belong to the warrior who had made the rescue. The other released his claim to it without further word.[8]

[8] This is, of course, an atypical case, involving as it does, land rights which are not a part of the aboriginal culture. However, it *does* show the carry-over of old attitudes to new procedures.

[177]

3:Wallace & Hoebel E-4, 5 (1933, 1945) 1952
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to push the process to its conclusion, or nothing would be done at all to provide relief or redress. 671

Nevertheless, a system of law it was. It was absolutely sure that certain forms of wrongs would be prosecuted. There were proper procedural patterns to be followed in the prosecution of a case. There were quite specifically understood sanctions to be applied to the different categories of offenses. And if the defendant was adamant beyond the point of reasonableness, he was, after due process, subject to a violent attack upon his person.

The essence of law, whatever specific forms it may take from one social system to another, comprises regularity, force, and official authority. Comanche law-ways had all those essential attributes.

"Dot" Babb's statement that on the whole there was little infringement on the rights of others among the Comanches, that they did not fight, quarrel, and commit murder as did the white man,[11] is contrary to the facts as we know them. The Comanches were most litigious, not, it is true, from any love of going to law for the savor of it, but because they were extreme individualists given to crowding each other in the unceasing struggle to outrank each other in personal prestige. A man could climb the social ladder by piling up a war record at the expense of enemies, and this was the legitimate way. But he could also reach toward his goal by aggressively challenging the status of a rival through stealing his wife, or seducing her, or taking his horse. This was the illegitimate way. It was illegal, but it was also customary enough. Forty-five cases of old-time legal actions arising from adultery and wife stealing alone were recorded from Comanche informants by one of the authors in his study of Comanche law-ways. Of these, twenty-two were wife-absconding cases and twenty-three were cases of simple adultery. 684 577 674

If the Comanches were lawless, it was not through an absence of law, but rather because of a reckless tendency to break the law in the face of certain and severe penalties. Seven of the forty-five erring wives paid the death penalty: four for running off with another man, three for committing adultery. Of the remaining twenty adulteresses, five were mutilated by their husbands: four had the tips of their noses cut off and one had the soles of her feet slashed so that she could not 684

[11] Babb, *op. cit.*, 102–104.

The Comanches

848 Many forms of social conduct which are considered Abnormal in
our own society were not considered criminal by the Comanches. Their attitudes toward illegitimacy, which seems to have been rare, show no vindictiveness, although the feeling prevailed that every child should have a recognized father.

Premarital sex relations were common, but in case a child was born as a result, the father usually married the mother. The father could claim the child at any time.

835 Incest, which consisted of sexual relations between two persons within three degrees of relationship, was tabu, but there was no legal control. The few men who were known to have committed incest were called *pɔsa*, "crazy." Beyond this, there was only informal ostracism—and more sneering references. Thus, when Pointing to the Rising Sun married his sister's beautiful daughter, Wide Feet, his own sister refused to address him as *monapɔ*, "son-in-law," which would have been the respectful and proper thing to do, had it been a proper marriage. The People did not let it pass, however; they made it a point always to refer to him, her elder brother, as her son-in-law.

The Comanches actually had strong feelings against incest—brother-sister avoidance was enjoined on this basis—but they felt no need to impose strong sanctions against it. Most men were too concerned with the maintenance of their personal prestige to mar it with such an act. And perhaps more important is the fact that Comanche supernaturals were in no sense projected images of a rewarding and punishing father. Incest was not a sin against the gods any more than it was a crime. There was no need to punish the offender in order to protect the community from supernatural wrath. The act remained an offense against good taste, nothing more.

839 Rape, except upon captives, occurred infrequently and was not part of the general pattern. Sleep-crawling by either boy or girl was legitimate if the recipient did not object to quiet night visits. But before the advent of the white race's demoralizing influence, Comanche women rated high in chastity.

674 Theft was so unusual that no provision was made for it in the
● 577 legal scheme. Consequently, it must fall into the vague class of unapproved, abnormal acts which were outside the scope of the law. Generosity was so highly valued that he who had need of something had only to indicate his desire, and he would receive it as a gift.

7: Richardson D-4 (no date) 1929
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They
533had some music, but their repertoire was limited even for savages. Noah Smithwick, who spent several months with the Comanches about 1837, states that it was customary for the first fellow who awoke in the morning to announce that fact in song; but he thought this was rather a "spontaneous outpouring akin to that of the feathered songsters than a religious rite."[30]

157 Notwithstanding their lack of culture the Comanches were not a dull people. In native ability their chiefs were a match for the keenest minds of the white men. Once in a council (the proceedings of which were carefully recorded by a secretary) President Sam Houston was trying to get the Comanches to agree to a line of division between the country of the Indians and that of their white neighbors. In the treaty the line was not being described as the Indians had been told it would be run. Buffalo Hump, a young Comanche chief, detected the discrepancy at once and a sharp argument between him and Houston followed. The dialogue is too long to be repeated, but one who reads it will be convinced that the chief knew exactly what he wanted and why he wanted it. He knew the topography of the country to perfection and also the settlements and roads. He clung persistently to his position and would not be moved from it.[31]

181 Notwithstanding their many savage vices the Comanches rated
577higher morally than other nomadic tribes. They were hospitable and would share their last morsel with their guests. In war they gave no quarter and asked none, but it was not their custom to apply slow torture to unfortunate enemies. Of course individuals differed widely. Among the Southern Comanches, chief Buffalo Hump was erratic and sometimes treacherous, but Mo-pe-cho-co-pe (Old Owl) was even tempered and altogether dependable. Robert S. Neighbors, long a Texas and United States Indian agent, knew the Old Owl for a number of years and in his reports quotes him again and again. There is nothing whatever to indicate that Neighbors ever lost confidence in the old savage or ever doubted his word.[32] There were, no doubt, many Comanches as honest as the Old Owl, but the

30. **The Evolution of a State, 181.**

31. "Minutes of a Grand Council held near the Falls of the Brazos, between the Republic of Texas and the Indians, commencing on Monday, October 7th, 1844, Ms. Texas Indian Papers.

32. For instance, see Neighbors' report to Medill, 30 Cong., 1st Session, Senate Executive Document No. 171, 16-25.

7: Richardson D-4 (no date) 1929
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nomadic habits of the tribe and their loose political organization made it impossible for the honest Indians to control their less scrupulous brethren and the reputation of all suffered because of the acts of a few. Furthermore, after about the middle of the nineteenth century it was almost impossible for the plains Indians to live by honest means. The inroads of whites and eastern Indians resulted in the killing off of their game so that the nomadic savages had to either steal or starve. Naturally they chose to steal. Also, the Anglo-American frontiersman had little regard for the Indians' rights and a thousand acts of injustice prompted the most horrible retaliation on the part of the savages.

The Comanches loved tobacco, but eschewed liquor until the last days of the pre-reservation period. However, even in this respect they gradually yielded to the demoralizing influence of the stronger race and drunkenness was occasionally observed. The fascination which the vices of the whites had for the savages is illustrated by an anecdote Smithwick gives in his memoirs. With chief Muguara (who was later slain in the Council House fight at San Antonio) Smithwick had visited Bastrop and the two were about to return to the Comanche village. "Juaqua," said the old chief, addressing Smithwick by his Comanche name, "hadn't we better get a bottle of fool's water? We might meet hostile Indians on the road and it would make us brave."[33]

33. The Evolution of a State, 179.

[pp 74-end not processed]

21: Burnet 1-5 (1818-1819) 1951 NO6 Comanche .do
Texas

[ca. 1818]

175 771 which has never been shadowed to their minds, except by the faint and flickering light of nature. The beams of divine revelation have never penetrated the dismal mists that constitute their moral atmosphere. They nevertheless believe in a final accountability, in which they plainly, but perhaps unconsciously, indicate a sentiment of the omniscience and ubiquity of the Great Judge of Heaven and Earth. By an obvious and natural impulse of unenlightened reason, which is most apt to prefigure the joys and sorrows of a future state, by the experience of the past and present, they suppose that when a good man dies, he goes to a fertile and salubrious country where the Buffaloes, which furnish their principal and favorite aliment, and every desirable species of game are abundant, and where they will enjoy the charms of the chase, with a more exquisite zest, without interruption and without satiety. The reverse of this destiny is assigned to the wicked, who they imagine will be driven away, to linger out a miserable existence, among rugged and sterile hills that are infested with all manner of noxious animals, and where the Buffaloes, Deer and Bears are scarce, and meagre and unsavory to the palate. Goodness, however, in their system of ethics, is a qualified term that has reference to acts of public benefit and renown, such as taking of scalps, expert and successful hunting, and dexterity in stealing from their enemies, rather than to the gentler virtues, that adorn and humanize and purify the heart.

175 771 776 [186] 175 771 [821] [753] [793] [796] They believe in polytheism and in both good and evil spirits of either sex, but claim supremacy to the one Great Being, whom they represent as a Big Man, that can never die, and who is the peculiar original parent of the Comanchee race. The origin of other nations they assign to other subordinate Deities, and as their father is the Greatest God in Heaven, so they think themselves the greatest nation on earth. They attribute an inferior modicum of divinity to the sun, and suppose all febrile diseases to emanate from the displeasure of that magnificent candle of nature. They have no order of priesthood, but are not altogether exempt from the juggles of priestcraft. They have no symbols of true faith, neither do they know any distinction of days or seasons.

29: Hoebel E-4,5 (1933) 1969 NO6 Comanche NO6

Out of apparent weakness emerged the wildest marauding brigandage. The Comanches whipped and drove the Apaches from the southern Plains. They stalemated the Spanish. They decimated the pueblo of Pecos. They ranged far below the Rio Grande on slave- and booty-taking raids into Old Mexico. They blocked the westward expansion of the Texas frontier for several decades. They became "The Spartans of the Prairies." They were rough, tough, aggressive and militant individualists. They gave trouble to all their enemies and to themselves. And in their way, out of the nothingness of Shoshone legal backgrounds they shaped a crude but effective system of law to cope with the clashes of individual with individual within their ranks.

. . .

The basic postulates of the Comanche way of life are simple and few. They express a strong individualism and man-to-man aggressiveness in the following terms:

Postulate I. The individual is supreme in all things.

Postulate II. The self of the male is realized in striving for accumulated war honors, horses, and women.

Postulate III. Women are sexually and economically desirable but are inferior and subordinate to men.

Corollary 1. The sex rights of a husband to his wife are limited to himself and his brothers.

Postulate IV. The strongest social tie is that of brother to brother.

Postulate V. Sexual relations between kin (incest) constitutes subhuman behavior.

Postulate VI. War is essential to the prosperity of the tribe and the individual self-expression of the male.

Postulate VII. The great spirits (Sun and Earth) have powers of "legal" judgment.

Postulate VIII. Each Comanche ought to cooperate with others and help them in their life's activities.

Corollary 1. Altruism and sharing of goods is socially desirable.

Corollary 2. The killing of a fellow tribesman is not permissible.

Postulate IX. Horses, especially favorite horses, have quasi-human personalities.

The simple needs of Comanche society did not impose any great social pressure for governmental controls, and the high value placed upon individual freedom of action also worked to hold government at a minimum. If a Comanche had been invited to subscribe to a political slogan, he would have given his assent to the proposition that "that government is best which governs least." So fully was this precept expressed in a lack of political action that That's It, one of the most acute of our Comanche informants,

/page 40 continued/

795 give them a base of operations from which they were able to partake
771 constructively in tribal politics. I cannot determine as yet just
177 how long this period lasted. The personality of Quanah Parker and his successes in dealing with the Whites were an added inspiration to Peyotists. But the period does not seem to have lasted very long. The adaptive qualities certainly seem to have gained the upper hand in a fairly short time. But there appears to be two sorts of adaptation at work; one is that inward turned attitude of the Comanches in the local groups, the other is the more White or outward oriented attitude of the Comanches in the national organization.

795 /41/According to the Peyotists in the local organizations, all
771 those traits which are Christian in appearance are merely used for
177 protective coloring. The cross, Christ, the organization into a church, the use of Peyote as a sacrament etc. and so forth, either have been designed purely to put Peyote on a fighting basis legally or have very definite Peyote counterparts to the better known Christian
795 ones. Moreover, the ethical principles, with one major exception, are
771 only Christian in wording and are not felt to be at all identical by
177 Peyotists. Essentially the ethics and values of Peyote stem directly
577 from the traditional culture in the minds of the Peyotists. The ethic of brotherly love and non-violence is the exception to this, but it is not a borrowed Christianism so much as a necessary element in a situation which demanded the unity of an oppressed people and the impossibility of using agression. It is important to note that the call to brotherly love does not really extend to the White man except in a very abstract sense. There is no ethic in Peyote which is inconsistent with the traditional values and no symbolism which does not derive from traditional symbols. The dichotomy between Christianity is a proof to this more than the antagonisms between the two faiths could ever be.